No. 10-432

In The

Supreme Court of the United States

SHERIFF DEWAYNE BEGGS, JEANNE ANN BECK, KENNETH ALBRECHT, and MICHAEL STEVENSON,

Petitioners,

v.

ESTATE OF EVA JUNE CROWELL, DECEASED, by and through ANNA M. BOEN, personal representative,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether any unconstitutional custom, policy or act of, or knowledge by, the Sheriff, as the final policymaker, was alleged or shown.

2. Whether the Supreme Court of Oklahoma's opinion conflicts with important and settled federal constitutional questions regarding the principle that the doctrine of respondeat superior does not apply in cases brought pursuant to 42 U.S.C. § 1983.

3. Whether the Supreme Court of Oklahoma's opinion conflicts with the state court of last resort of numerous states with regard to principle of respondeat superior under 42 U.S.C. § 1983.

4. Whether the Supreme Court of Oklahoma's opinion conflicts with decisions of the United States Supreme Court, and of the United States Courts of Appeals.

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INTRODUCTION

The Petitioners in this matter would have this Court believe that this is a case about the doctrine of respondeat superior, which it is not. This is a case about Eva June Crowell, an asthmatic inmate housed at the Cleveland County jail in Norman, Oklahoma, who died, according to the medical examiner's office, of an acute asthma attack, after having been recklessly delayed and denied access to her emergency inhaler by the jail employees present at the time, all of whom were acting under the control, direction, and supervision of the Sheriff of Cleveland County. The Respondent has alleged that these actions of the Petitioners, including the Sheriff, constitute deliberate indifference to the deceased's serious medical condition in violation of her constitutional rights and 42 U.S.C. § 1983.

As with any case where the propriety of summary judgment is at issue, this matter is very fact intensive and, in the end, it was the disputed facts presented in the evidentiary materials supplied by the Respondent, not some deviation from the applicable federal jurisprudence, which the Supreme Court of Oklahoma relied upon in reversing the trial court's decision to grant summary judgment. After duly examining the law as it applied to the facts of this case, the Supreme Court of Oklahoma's decision recognized that considering all the evidence presented in the light most favorable to the Respondent, a reasonable fact finder could conclude that both the jail employees *and* the Sheriff acted with deliberate

indifference to the deceased's serious medical needs, in violation of 42 U.S.C. § 1983.

STATEMENT

This appeal arises from the Supreme Court of Oklahoma's decision, filed on January 26, 2010, reversing the trial court's order granting summary judgment in favor of Petitioners.

Respondent Anna M. Boen, Personal Representative of the Estate of Eva June Crowell, deceased, filed her Petition in the District Court of Cleveland County, Oklahoma, on March 22, 2005, for personal injuries and damages sustained by Ms. Crowell from violation of her constitutional rights at the Cleveland County jail.

Petitioners filed a Motion and Brief to Dismiss on August 5, 2005. This Motion was granted as to the state claims against the Petitioners but denied as to the Respondent's federal § 1983 claims, on September 15, 2005.

Petitioners filed their first Motion and Brief for Summary Judgment on February 9, 2007. The Motion was subsequently denied by the trial court on April 9, 2007.

After further discovery, including deposition of the Respondent's medical expert, the Petitioners filed a Second Motion and Brief for Summary Judgment on March 7, 2008. The Second Motion essentially

repeated the arguments of the first motion, adding that the result should be different in this instance because of certain statements made by Respondent's medical expert at deposition.

The Petitioners' Second Motion was denied on June 6, 2008, but the court allowed in its ruling for the Petitioners to request reconsideration at pretrial conference on August 28, 2008. At pretrial, after initially scheduling a trial date, the trial court heard the Petitioners' request to reconsider its previous decision and subsequently sustained the Petitioners' Second Motion for Summary Judgment, finding that the evidentiary material submitted by the Respondent supported only a finding of negligence, and not a finding of deliberate indifference.

The Respondent filed her petition in error with the Supreme Court of Oklahoma appealing the trial court's decision. The case was subsequently assigned to the Oklahoma Court of Civil Appeals, which denied Respondent's appeal on December 18, 2008.

The Respondent appealed the Court of Civil Appeals decision by filing a writ of certiorari with the Supreme Court of Oklahoma, which granted certiorari. On January 26, 2009, the Supreme Court of Oklahoma reversed the decision of the Court of Civil Appeals affirming summary judgment against the Petitioners herein, and held that the § 1983 claims against the Petitioners should proceed to trial.

REASONS FOR DENYING THE WRIT

I. THE DECISION OF THE SUPREME COURT OF OKLAHOMA WAS BASED UPON THE APPLICABLE STATE AND FEDERAL LAW AND THE UNIQUE FACTS OF THE CASE, NOT UPON THE DOCTRINE OF RESPONDEAT SUPERIOR. THE DECISION OF THE SUPREME COURT OF OKLAHOMA DOES NOT CONFLICT WITH DECISIONS OF OTHER COURTS REGARDING § 1983 CLAIMS.

The Petitioners primarily argue in their Petition for Writ of Certiorari that the Supreme Court of Oklahoma, in its decision below reversing summary judgment, impermissibly applied the doctrine of respondeat superior and ignored the applicable federal § 1983 jurisprudence in deciding potential liability against the Sheriff in this case.

The doctrine of respondeat superior, which is left undefined in the Petitioner's Petition for Writ of Certiorari, acts to impose liability upon an employer for torts committed by his employees even when the sole nexus between the employer and the tort committed is the employee-employer relationship. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 692 (1978), citing W. Prosser, Law of Torts § 69, p. 459 (4th ed.1971). It is clear from the caselaw presented by Petitioners that the doctrine of respondeat superior does not apply in § 1983 actions. However, the decision of the Supreme Court of Oklahoma at issue in this case simply does not rely upon the doctrine of

respondeat superior. The Respondent has never alleged respondeat superior as a cause of action in this matter, either in her original petition or any subsequent pleading, and the Supreme Court of Oklahoma opinion here at issue never uses the words "respondeat superior" and never holds that the doctrine of respondeat superior applies in any way to the case at bar.

On the contrary, the Supreme Court of Oklahoma opinion considered and applied multiple sources of law, both state and federal, in arriving at its reasoned decision below. The court noted that the Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments," and that multiple United States Supreme Court cases, including *Whitley v. Albers*, 475 U.S. 3121 (1986); *Ingraham v. Wright*, 430 U.S. 651, 670 (1977); and *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976), have found that the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment.

The opinion cites *Estelle,* and *Farmer v. Brennan*, 511 U.S. 825 (1994), as authority for the principle that "deliberate indifference to serious medical needs of prisoners" constitutes cruel and unusual punishment under the Eighth Amendment, and the Eighth Amendment applies to prison officials when they provide medical care to inmates. *See Estelle*, 429 U.S. at 423. The court noted that a federal court in *Hutchinson v. United States*, 838 F.2d 390, 393-94 (9th Cir. 1988), held that deliberate indifference may be shown when prison officials deny, delay, or intentionally

interfere with medical treatment, and it may also be shown by the way in which prison officials provide medical care.

In considering the issue of the Sheriff's official responsibility, the Supreme Court again considered several applicable federal cases, including *Meade v. Grubbs*, 841 F.2d 1512, 1527 (10th Cir. 1987), in which the court found that although an "affirmative link" must be shown between the alleged constitutional deprivation and the actions of a supervisor, the link may be shown in several different ways, including the supervisor's personal participation, his exercise of control or direction, or his failure to supervise, and a plaintiff may meet this burden by showing the supervisor breached a duty imposed by state or local law.

In analyzing whether or not the Respondent had shown enough evidence of the Sheriff's supervisory responsibility to overcome a motion for summary judgment, the Supreme Court of Oklahoma considered several factors, including the applicability of an Oklahoma state statute, 57 O.S. 2001 § 52, to the present case. 57 O.S. 2001 § 52 provides that the sheriff of each county in Oklahoma has a statutory duty to provide "medical care when required, and all necessities for the comfort and welfare of prisoners."

The court concluded that pursuant to *Meade*, this statutory language created a duty on the part of Sheriff in the instant case to provide prisoners, including Ms. Crowell, necessary medical care while

incarcerated at the Cleveland County jail, and his failure to do so could provide the "affirmative link" between his actions and the constitutional deprivation alleged by Petitioners. The court did not hold that 57 O.S. 2001 § 52 provides a basis for finding liability of the Sheriff independently of, or in contradiction to, § 1983 jurisprudence. The court merely recognized that the existence of 57 O.S. 2001 § 52 may be used by a finder of fact to determine whether or not the Sheriff's actions or inactions in this case rose to the level of deliberate indifference as defined by the applicable federal caselaw.

The use of a state statute by the Supreme Court of Oklahoma in its opinion does not conflict with the federal jurisprudence cited by Petitioners in their Petition for Writ of Certiorari. All of the decisions cited by the Petitioners are distinguishable from the unique facts presented in this case, which includes not only the existence of a state statute which imposes a duty of care to every sheriff in Oklahoma, but also the pertinent facts shown in the evidentiary materials presented to the trial court by Respondent, including: the length of Ms. Crowell's incarceration; the jail employees' knowledge of Ms. Crowell's serious asthma condition; the frequency of her requests for her inhaler; the jail employees' refusal to bring Ms. Crowell her emergency inhaler despite her obvious emergency and the panicked requests of her cellmates; the fact that the jail employee responsible for bringing the inhaler insisted on completing a "head count" before responding to Ms. Crowell's medical

emergency; the extraordinary length of time it took jail employees to respond to the emergency; the fact that the emergency inhaler was kept in a locked drawer on the second floor, and the fact that alternative methods of delivering the inhaler to Ms. Crowell were discussed but never implemented. Even the Petitioners, in their Petition for Writ of Certiorari, acknowledge that the Sheriff was the policymaker for the Cleveland County jail.

Yet the Petitioners continuously argue that the Sheriff cannot be held liable for the constitutional violations of his jail employees because he has signed an affidavit purporting he did not personally know of the deceased's medical problems and was not personally present at the time she died of an acute asthma attack. None of the caselaw cited by the Petitioners, including the caselaw related to respondeat superior, holds that a sheriff can only be responsible for constitutional violations committed in his or her presence. To the extent the Sheriff was not personally present at the jail during the events leading to Ms. Crowell's death, he should not be allowed to escape liability as a result of self-imposed ignorance.

Furthermore, no case cited by the Petitioners holds that it is never appropriate to consider state statutes in deciding the sufficiency of factual allegations in § 1983 actions. The cases cited by Petitioners overruling the applicability of state law to § 1983 cases overwhelmingly deal with various attempts by the states involved to impermissibly restrict an inmate's right to pursue redress for violations of § 1983.

Interestingly, in their Petition for Writ of Certiorari, the Petitioners ask this Court on one hand to consider language in the Oklahoma state jail regulations as evidence in support of reversal, but on the other hand to prevent the Supreme Court of Oklahoma to take state law into consideration when deciding potential liability. The Petitioners would use the applicable state law in this matter as both a shield and a sword.

The Supreme Court of Oklahoma decision below was ultimately a primarily factual determination regarding whether the summary judgment granted by the trial court was proper. As the court recognized, summary judgment is only appropriate when there is no substantial controversy as to any material fact. 12 O.S. 2001, ch. 2, app. 1, Rule 13; *Copeland v. Tela Corp.*, 1999 OK 81, ¶4, 996 P.2d 931, 932. The court also noted the language in *Copeland* finding that where liability is based on what the defendants knew or should have known, "self-imposed ignorance" on the part of the defendants is not determinative, and a plaintiff may show the matter that the defendants knew or should have known by circumstantial evidence and inference. *See Copeland*, 1999 OK 81 at ¶8 and 10, 996 P.2d at 933-34.

Nothing in the fact-driven decision of the Supreme Court of Oklahoma in this case conflicts with the decision of another state court of last resort, a United States court of appeals, or the United States Supreme Court, regarding an important question of federal law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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